***THE HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA**

+Writ Petition No.3595 of 1999

%Dated 16.04.2007

Kallepalli Krishnam Raju S/o Satyanarayana Raju,
R/o Kakinada.

… Petitioner.

VERSUS

$ The Commissioner and Inspector General of
Registration & Stamps, A.P., Hyderabad and another.

… Respondents.

! Counsel for Petitioner: Smt.Anjana Devi

^Counsel for Respondents: Government Pleader for Revenue

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? Cases referred

THE HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA

WRIT PETITION No.3595 of 1999

Dated : 16.04.2007

Between:

Kallepalli Krishnam Raju

… **PETITIONER**

And:

The Commissioner and Inspector General of
Registration & Stamps, A.P., Hyderabad and
another.

….**RESPONDENTS**

THE HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA

WRIT PETITION No.3595 of 1999

ORDER:

This writ petition is filed seeking a Mandamus declaring the impugned order dated 21.01.1999 passed by the first respondent and the demand notice dated 08.02.1999 issued by the second respondent as arbitrary and illegal.

It is the case of the petitioner that himself and four others entered into partnership in the name and style of "Sri Ganesh Gayathree Gruha Nirman" to carry on the business of real estate. The petitioner got 50 per cent share in the said firm and has contributed his house site admeasuring 843 square yards situated in Kakinada Municipality in T.S.No.17, towards his share in the firm, and a partnership deed, dated 29.07.1995, to that effect was executed, and registered. However, the second respondent issued a demand notice dated 05.08.1996 to the petitioner demanding him to pay the stamp duty to a tune of Rs.81,822.50 construing the said partnership deed as sale deed and also fixing the value of the site at Rs.6,81,650/-. Pursuant to that the petitioner filed objections dated 11.09.1996 and thereupon, the second respondent passed an order dated 26.09.1996 confirming the demand notice. Aggrieved thereby, the petitioner filed an appeal before the first respondent, and though the first respondent observed that the Partnership Deed is not a sale deed, but held that the property mentioned in the partnership deed to the extent of value of the share of the petitioner amounting to Rs.3,35,000/- is the share of the petitioner, but the remaining sum of Rs.3,39,400/- has to be construed as a gift

given by the petitioner to the firm, and liable for stamp duty under Article 29 of Schedule I-A of the Indian Stamp Act. Pursuant to the order of the first respondent, the second respondent issued a notice dated 08.02.1999 demanding the petitioner to pay the deficit stamp duty. Hence, this writ petition.

A counter affidavit is filed on behalf of the respondents stating that the value of the property to an extent of Rs.3,35,000/- has to be construed as the share of the petitioner and the remaining value of Rs.3,39,400/- as a gift made by the petitioner to the firm and as such liable for stamp duty, and thus there is no illegality in the action of the respondents.

Heard the learned counsel for both the parties.

Learned counsel for the petitioner submits that the petitioner is the major shareholder having fifty per cent share in the firm, and in lieu of putting share capital into the firm, he has chosen to put the property in question and the authorities, without considering the same, treated the property worth Rs.3,39,400/- either as sale or gift made by the petitioner in favour of the firm and are trying to levy stamp duty, which is unwarranted.

The learned Government Pleader submits that the value of the property is Rs.6,74,400/- and the actual share of the petitioner works out to only Rs.3,35,000/- and hence, the appellate authority has rightly treated the balance amount of Rs.3,39,400/- as the gift made by the petitioner in favour of the firm, and thus directed the petitioner to pay the stamp duty for the said amount.

Having heard both the counsel, it is desirable that the relevant provisions of law i.e, Section 14 of the Indian Partnership Act, 1932 (for short “the Act”) has to be referred, and it is thus:

> **"Section 14 of the Indian Partnership Act, 1932**: The property of the firm – Subject to contract between the partners, the property of the firm includes all property and rights and interests in property originally brought into the stock of the firm, or acquired, by purchase or otherwise, by or for the firm, or for the purposes and in the course of the business of the of the firm, and includes also the goodwill of the business.
>
> Unless the contrary intention appears, property and rights and interests in property acquired with money belonging to the firm are deemed to have been acquired for the firm."

By virtue of the above provision of law, any property can be thrown into the Partnership stock without any formal document so as to make it the property of the firm. Further, when a partner brings in his personal assets into the firm as his contribution to the capital, his exclusive ownership in the said assets ceases, and he becomes joint owner along with other partners. The whole concept of partnership is to embark upon a joint venture and for that purpose to bring in as capital, money or even property including immovable property. Once that is done, whatever is brought in would cease to be the exclusive property of the person who brought it in and it becomes the trading asset of the partnership in which all the partners would have interest in proportionate to their share in the joint venture of the business of partnership. The person who brought it in would, therefore, not be able to claim or exercise any exclusive right over any property which he has brought in, much less over any other partnership property. Even if the property contributed by one partner be an immovable property, any document registered or otherwise as required for transferring the property to the partnership firm.

Further, all property and rights and interests, which the partners may have brought in the common stock as their contribution to the common business, are parts of the partnership property. Even if a property contributed by one partner be an immovable property, no document, registered or otherwise, is required for transferring the

property to the partnership. No written or registered document is necessary for an individual to contribute any land or immovable property as a contribution against his share of the capital of a new partnership business. By virtue of Section 14 of the Act and certain provisions of the Contract Act, they become the properties of the firm as soon as the partners intend to so bring them in and treat them as such. This sort of contribution or transfer is not prohibited by the Transfer of Property act, 1882. or the Registration Act, 1908.

Further, from a reading of Section 14 of the Act, any property can be thrown into the partnership stock without any formal document and would, therefore, become the property of the firm. Moreover, when the very partnership firm formally came into existence under the document and there were no words whatever of a dispositive character, which, expressly or by implication amounted to a transfer of interest as between the partner who threw his property in the partnership and the rest of the partners, it could not be presumed that the partner sold his property to the partnership firm. Therefore, even if the document is executed and the same is registered as a partnership deed, it cannot be construed either as a sale deed or as a gift deed for the purpose of collecting the deficit stamp duty.

In the light of the above discussion, this Court is of the view that the respondents have clearly erred in treating the Partnership Deed either as a sale deed or as a gift deed and further erred in directing the petitioner to pay the deficit stamp duty.

Accordingly, the writ petition is allowed and the order of the first respondent dated 21.01.1999 and the demand notice dated 08.02.1999 issued by the second respondent are hereby set aside.

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16.04.2007

Note: L.R. Copy to be marked.

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